firm to enter into the contemplated contract. It is submitted that the former is the correct view, since from the mere relation of partnership there arises a power in each partner to act for the firm in the course of its business. But see GEORGE, PARTNERSHIP, § 103; BURDICK, PARTNERSHIP, 3 ed., 231-234. See also J. A. Crane, "The Uniform Partnership Act — A Criticism," 28 HARV. L. REV. 762, 781; W. D. Lewis, "The Uniform Partnership Act — A Reply to Mr. Crane's Criticism," 29 HARV. L. REV. 291, 302. This power may, therefore, be revoked or restricted only by action of the firm. A dissent by a majority of the partners is an act of the entity. See LINDLEY, PARTNERSHIP, 8 ed., 255. See UNIFORM PARTNERSHIP ACT, §§ 9(1), 18(h), 9(4); 1920 ONT. STAT., c. 41, §§ 7, 25 (8), 10. But a dissent by one of two partners is not.

PRIZE LAW — CAPTOR'S DUTY TO USE DUE CARE — LIABILITY FOR FAILURE TO INSURE. — Certain goods were seized by the English authorities as prize. The goods were forwarded by rail to be examined, but were burned in transit, through causes unknown. The captors had failed to insure the goods. It having appeared that the goods were not lawful prize, the foreign owners seek to recover for the failure to insure. *Held*, that they cannot recover. *The New Sweden*, 126 L. T. R. 31 (P.).

It is well settled that the captor of goods seized as prize, like any other bailee, must use due care in handling such goods. *The William*, 6 C. Rob. 316. See 3 PHILLIMORE, INTERNATIONAL LAW, 683. The question here is whether that duty of care involves a duty to insure. The precise point seems not to have arisen before. If the captor insures for his own benefit, since there is no obligation to turn the proceeds over to the owner of the goods it is clear that the owner need not reimburse the captor for the cost of such insurance. *The Cairnsmore*, [1921] 1 A. C. 439; *The Catherine and Anna*, 4 C. Rob. 39. But the English court has recently held that where the captor effects insurance for the benefit of the owner, he is entitled to reimbursement. *The United States*, [1920] P. 430. While it does not necessarily follow from the last case that the captor must insure, yet this would be a desirable extension of the decision. In the business world of today, the insurance of cargoes is regarded as an essential expenditure; and the effecting of insurance might well be held to constitute an indispensable element of due care on the part of the captor. See LUSHINGTON, NAVAL PRIZE LAW, § 83. It is to be hoped that the principal case will not be followed.

PROXIMATE CAUSE — FORESEEABILITY AS AN ELEMENT OF CAUSATION. — The plaintiff was a passenger on the defendant's train. Through the negligence of the defendant's servants the train struck an automobile, throwing it forward against a switch handle so as to open the switch. The train ran onto a side track where it collided with a cut of cars. The plaintiff was hurled from her seat by the impact, and injured. The lower court directed a verdict for the defendant on the ground that the negligence was not a proximate cause of the injury. The plaintiff's motion for a new trial was overruled, and the plaintiff appeals. *Held*, that the judgment be affirmed. *Engle* v. *Director General of Railroads*, 133 N. E. 138 (Ind.).

A result, however unforeseeable, produced by a force directly or by a series of forces each acting directly on the next in sequence, is proximately caused by the first force. *In re Polemis and Furness, Withy & Co.*, [1921] 3 K. B. 560; *Mathews* v. *Kansas City Railways*, 104 Kan. 92, 178 Pac. 252. It is arguable that the train's running onto the side track should be considered a continuation of the original force, and that the case should be treated as one of direct causation. But even if this view is rejected, the new alignment of the track was certainly a proximate result of the negligence. This result was a passive condition. If a passive condition risks another force acting upon it so as to directly produce injury, that injury is a proximate result of the force which

produced the passive condition. *Zollman* v. *Baltimore & Ohio S. W. Ry.*, 121 N. E. 135 (Ind. App.); *Burk* v. *Creamery P. M. Co.*, 126 Iowa, 730, 102 N. W. 793. See Joseph H. Beale, "The Proximate Consequences of an Act," 33 HARV. L. REV. 633, 650. Whether or not a risk is created involves the foreseeability of the intervening force. This is the only circumstance in which foreseeability is a factor in determining proximate causation. Considering the oncoming train as an intervening force, its intervention was clearly risked by the condition proximately caused by the defendant. On either view the causation was proximate. The decision is wrong.

RESTRAINT OF TRADE — FEDERAL TRADE COMMISSION — RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO USE OF PROPERTY — ENFORCING RESALES AT FIXED PRICES. — A corporation engaged in manufacturing "branded" food products sought to fix resale prices of wholesalers, jobbers, and retailers. The company refused to sell to those distributors who resold at other than the stated prices, or who sold to others who did so. To effectuate its purpose, the company inaugurated a plan of tracing sales, marking packages, reporting infractions, and listing distributors. The case was heard before the Federal Trade Commission on an agreed statement of facts stating that no contract, express or implied, for maintaining resale prices existed. The Commission condemned the plan as an unfair method of competition under § 5 of the Federal Trade Commission Act (38 STAT. AT L. 719). The Circuit Court of Appeals for the 2nd Circuit set aside the order of the Commission. *Held*, that the judgment be reversed. *Federal Trade Commission* v. *Beech-Nut Packing Co.*, U. S. Sup. Ct., Oct. Term, 1921, No. 47.

It is the accepted doctrine of the United States Supreme Court that contracts between manufacturers of "branded" or "specialty" products and the wholesalers or retailers through whom they distribute, fixing resale prices, are illegal under the Sherman Act. *Dr. Miles Medical Co.* v. *Park & Sons*, 220 U. S. 373; *United States* v. *A. Schrader's Sons, Inc.*, 252 U. S. 85. This doctrine has aroused much criticism, deservedly so, it is believed. See KALES, CONTRACTS AND COMBINATIONS IN RESTRAINT OF TRADE, c. 4. See Gilbert H. Montague, "Should the Manufacturer Have the Right to Fix Selling Prices?", 63 ANNALS AM. ACAD. POL. AND SOC. SCI., 55. See 33 HARV. L. REV. 966. But, somewhat illogically, it was held legal for a manufacturer to refuse to sell to any who did not resell at fixed prices, thus achieving the same business result as he would have through contracts. *United States* v. *Colgate & Co.*, 250 U. S. 300. Though the principal case arises under the Federal Trade Commission Act and not under the Sherman Act, the test of illegality under either should be the same. See KALES, *op. cit.*, c. 12. See Cornelius Lynde, "The Federal Trade Commission and Its Relation to the Courts," 63 ANNALS AM. ACAD. POL. AND SOC. SCI., 24. No weight is given, on review, to the Commission's conclusions of law. See *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427; *National Harness Mfrs. Ass'n* v. *Federal Trade Commission*, 268 Fed. 705, 707. The court in the principal case purports to save the rule of the *Colgate* case. But the practical effect of its decision is necessarily otherwise. While not in terms denying the right to refuse to sell to those who do not comply with the restrictions, it denies the right to use any means of discovering noncompliance. In effect, the court has nullified a desirable exception to a questionable rule.

STATUTE OF FRAUDS — SALES OF GOODS, WARES AND MERCHANDISE — CONTRACT TO ESTABLISH CREDIT BY CABLE TRANSFER. — A bank in New York orally contracted to ". . . deliver to defendant . . . a cable transfer of exchange . . .", *i. e.* to make available to a customer, by cable, a credit of £20,000 in London, at any time within four months, at the customer's